D.P.U. 93-15/16-A

Investigation by the Department of Public Utilities on its own motion as to the propriety of (1) the rates and charges set forth in the following tariffs of Cambridge Electric Light and Commonwealth Electric Companies: M.D.P.U. No. 523 and No. 276, respectively, filed with the Department on December 23, 1992, to become effective January 1, 1993, and suspended until July 1, 1993, proposing to collect lost base revenues through the Companies' respective conservation charges; (2) the proposed implementation of the Companies' Conservation Voltage Regulation Program; and (3) the Companies' 1992 C&LM performance.

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ORDER ON THE COMPANIES' C&LM PERFORMANCE

I. INTRODUCTION

A. History of the Companies' C&LM Activities

Over the previous four years, Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth") (together, the "Companies") have filed with the Department of Public Utilities ("Department") three petitions for preapproval of their conservation and load management ("C&LM") programs[1]. In the Companies' first preapproval filing, submitted on November 16, 1989, the Companies requested preapproval of sixteen C&LM programs. Commonwealth Electric Company/Cambridge Electric Light Company, D.P.U. 89-242/246/247, at 31-66 (1990) ("D.P.U. 89-242"). The Department preapproved program designs and budgets for the eight programs that were shown to be cost-effective. In addition, the Department ordered the Companies to submit, in their next preapproval filing, revised program designs for those programs found not to be cost-effective. Id.

In their second C&LM preapproval filing, submitted on April 16, 1991, the Companies requested preapproval of four programs that were being implemented at that

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[1] In D.P.U. 86-36-E (1988), the Department adopted regulations requiring Department preapproval for major investments by electric companies in generation facilities. See 220 C.M.R. § 9.00 et seq. The Department later found that the preapproval treatment was appropriate for major investments in C&LM. D.P.U. 86-36-F at 29 (1988). Because Cambridge and Commonwealth perform their resource planning functions in an integrated manner, the Companies submit joint C&LM preapproval filings to the Department.

time.[2] Commonwealth Electric Company/Cambridge Electric Light Company, D.P.U. 91-80 Phase Two-A at 2-3 (1992). The record in that proceeding indicated that four programs that had been preapproved in D.P.U. 89-242 had not been implemented in 1991 and were not resubmitted for preapproval in D.P.U. 91-80. The record also indicated that the Companies did not submit revised program designs for programs found not to be cost-effective in D.P.U. 89-242. Id. at 22-24.

On January 15, 1992, the Department issued an Order approving a Settlement Agreement ("Settlement")[3] in D.P.U. 91-80 Phase Two-A. The Settlement contained the following key provisions: (1) the retention of an Independent Expert, to be selected by the Settling Parties, who was expected "to advise the Companies, the Task Force, and the Department on how the Companies should best design, implement and monitor their C&LM programs" and "issue reports at least quarterly to the Department during 1992 and through June, 1993"; (2) the establishment of the Com/Electric C&LM Task Force[4] ("Task Force") in order to assist the Independent Expert and develop, improve, and oversee the Companies' C&LM activities; and (3) the requirement that the Companies design and implement C&LM

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2 These programs were: (1) the Residential Electric Space Heat Program; (2) the Residential Hot Water/General Use Program; (3) the Commercial and Industrial Direct Investment Program, targeting small commercial and industrial customers; and (4) the Custom Rebate Program, targeting medium and large commercial and industrial customers.

3 The Settlement was submitted on November 20, 1992 by the Companies, the Attorney General, DOER, the Energy Engineers Task Force, SORE, IRATE, CLF, State Senator William F. MacLean, Jr., and State Senator Henri S. Rauschenbach ("Settling Parties").

4 The members of the Task Force were comprised of the Settling Parties. (Senator MacLean, Jr. was replaced by Senator Mark Montigny in February 1993.)

programs pursuant to Department directives in D.P.U. 89-242.[5] Id. at 9-14

In D.P.U. 91-80 Phase Two-A, the Department preapproved the recovery of expenditures associated with the Companies' four C&LM programs. Also in that Order, the Department addressed the issue of whether the Companies' C&LM activities since 1990 were in compliance with Department directives in D.P.U. 89-242. Id. at 28-30. The Department found that, because the Companies had implemented only four of the eight C&LM programs preapproved in D.P.U. 89-242, and had not submitted revised program designs for programs found not to be cost-effective in D.P.U. 89-242, the Companies were "in violation of the preapproval contract and, accordingly, are in violation of the obligation to serve their customers in a reliable, least-cost manner." Id. The Department further stated that the Companies' "noncompliance with the Department's directives in D.P.U. 89-242 will be considered fully during the Companies' next base rate cases."[6] Id.

On October 1, 1992, the Companies submitted to the Department their third, and

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[5] The Settlement also established Conservation Charge rate caps for specific customer classes (for a description of the Conservation Charge, see note 11, infra).

[6] The Department addressed the noncompliance issue, as it pertains to Cambridge, in D.P.U. 92-250, Cambridge's subsequent base-rate case. D.P.U. 92-250, at 118-121 (1993). In D.P.U. 92-250, the Department, based on the finding of non-compliance: (1) set Cambridge's return on equity at the lower end of the reasonable range; (2) excluded management incentive compensation expenses from the test year cost-of-service; and (3) ordered Cambridge to immediately hand deliver a copy of the Order in D.P.U. 92-250 to each member of its Board of Trustees, so that the Board was made aware of the Department's concerns regarding management's poor C&LM performance. Id. at 120-121.

most recent, C&LM preapproval filing ("Filing"), docketed as D.P.U. 92-218.[7] The Companies indicated that the Filing was not a consensus Task Force document (Filing, Executive Summary at 1). In addition, the Companies indicated that many of the programs submitted for preapproval in the Filing were not cost-effective (id. at 2).

On April 9, 1993, the Department issued its Order in D.P.U. 92-218, dismissing the Companies' Filing without investigation. In that Order, the Department stated that

> [i]n considering the appropriate extent of the investigation of the Companies' filing, the Department must assess (1) the Companies' past implementation of C&LM programs and compliance with previous Department directives; (2) the completeness of the Companies' … Filing; (3) the voluminous and contentious nature of the comments received; and (4) the integration of the issues raised by both the Companies' … [C&LM] preapproval proceeding and the IRM proceeding.[8]

Cambridge Electric Light Company/Commonwealth Electric Company, D.P.U. 92-218, at 15-18 (1993). Based on an assessment of these issues, the Department found that "adjudication of this case cannot lead to the timely implementation of cost-effective C&LM programs." Accordingly, the Department found that adjudication of the issues in that case was not in the public interest and, thus, dismissed the Companies' Filing. Id.

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[7] On December 23, 1993, the Companies submitted a Supplemental Filing to their October 1, 1993 Filing. The Initial and Supplemental Filings will be referred to jointly as the "Filing."

[8] In a May 29, 1992 Letter Order ("May 29 Order"), issued in the Companies' integrated resource management ("IRM") case, docketed as D.P.U. 91-234, the Department required the Companies to submit, by July 1, 1993, a competitive C&LM request for proposals ("RFP"), providing for C&LM resource procurement beginning July 1, 1994. The Department stated that the competitive solicitation would ensure that C&LM services are available to all customer classes should the Companies fail to implement cost-effective C&LM programs. Id. For a description of the IRM process, see IRM Rulemaking, D.P.U. 89-239 (1990).

Currently, the Companies are implementing two residential programs, the Residential Electric Space Heat ("RESH") Program and the Hot Water General Use ("HWGU") Program.[9] The Companies suspended the two C&LM programs targeted at commercial and industrial customers, the Custom Rebate Program ("CRP") and the Direct Investment C&I ("Small C&I") Program, on April 1, 1991 and October 1, 1991, respectively, although measures have continued to be installed under CRP in those "pipeline" projects that were ongoing when the suspension took effect. D.P.U. 91-80 Phase Two at 5, 11, n.7.

B. Procedural History

On December 23, 1992, the Companies separately filed rate schedules M.D.P.U. No. 523 (Cambridge) and M.D.P.U. No. 276 (Commonwealth), for Department approval, reflecting the Companies' request to recover lost base revenues ("LBR")[10] through their respective conservation charge ("CC") decimals.[11] On January 13, 1993, the Department suspended the operation of the respective rate schedules until July 1, 1993, to allow for further investigation. The investigations of the Companies' LBR requests were docketed as D.P.U. 93-15 (Cambridge) and D.P.U. 93-16 (Commonwealth).

Also on December 23, 1992, the Companies filed a Joint Petition for the Continued

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9 In D.P.U. 92-218, the Department directed the Companies to implement these programs at their current activity levels until July 1, 1994. Id. at 18.

10 Lost base revenues are those base revenues that a company does not collect from its ratepayers because of the decrease in billing units that results from C&LM program savings.

11 The Companies recover their C&LM expenditures from their ratepayers through a CC that is calculated and applied separately to each rate class, based on the C&LM services provided.

Effectiveness of Current Conservation Charge Decimals ("CC Motion"), which proposed that the CC rates then in effect would remain unchanged until the Department issued its Order in D.P.U. 92-218.[12] In a January 8, 1993 letter ("January 8 Letter") responding to the Companies' CC Motion, the Department expressed a concern regarding the under- and over-recovery, in 1992, of expenditures associated with the implementation of the Companies' C&LM programs, specifically the Residential Space Heat Program and the all-electric schools component of the Custom Rebate Program. January 8 Letter at 1-2. The Department stated that a review of the under- and over-recoveries was necessary before a decision could be made on the Companies' CC Motion. Id. On February 3, 1993, based on our review of these issues, the Department rejected the Companies' CC Motion ("February 3 Letter"). In that letter, the Department ordered Commonwealth to revise the CC for its Residential Space Heating Customers immediately to reflect 1992 underexpenditures in the Residential Electric Space Heating Program. February 3 Letter at 1-2. In addition, the Department indicated its intention "to initiate an investigation into the performance of the Companies related to the implementation of their C&LM programs," including a review of the 1992 over- and under-recoveries for all of the Companies' rate classes. Id.

As stated above, the Department, in D.P.U. 92-218, dismissed the Companies's most recent C&LM preapproval filing. In that Order, the Department stated that the following issues regarding the Companies' C&LM activities remained unresolved and needed to be

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[12] The Companies stated that because the CC rates likely would be revised at some point to reflect the Department's findings in D.P.U. 92-218, their proposal reflected the Department's goal of rate continuity (CC Motion at 1-2).

investigated: (1) the Companies' request to recover LBR; (2) the Companies' proposed Conservation Voltage Regulation ("CVR") Program, which was part of the Companies' filing in D.P.U. 92-218; and (3) the Companies' performance with regard to their 1992 C&LM activities. Id. at 14-18. In order to investigate these issues in an administratively efficient manner, the Department announced that the Companies' requests to recover LBR would be consolidated and docketed as D.P.U. 93-15/16, and that the CVR Program, and the Companies' 1992 C&LM performance would be investigated as part of those same proceedings. Id.

On April 9, 1993, the Department issued an Order of Notice in D.P.U. 93-15/16 that, inter alia, set April 14, 1993 as the deadline for filing petitions for leave to intervene in the proceeding and established April 21, 1993 as the public hearing date. The Hearing Officer granted the petitions for leave to intervene as a party filed by IRATE, Inc. ("IRATE"), the Conservation Law Foundation, Inc. ("CLF"), the Division of Energy Resources ("DOER"), the Massachusetts Institute of Technology ("MIT"), and Save Our Regional Economy ("SORE"). The Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention pursuant to G.L. c. 12, § 11E.

In a Hearing Officer Memorandum, dated April 27, 1993, the Department instituted separate schedules in D.P.U. 93-15/16 for: (1) the investigation of the Companies' CVR Program, proposed recovery of LBR, and CC calculation; and (2) the investigation of the Companies' 1992 C&LM performance. The Department conducted three days of evidentiary hearings on May 4, May 5, and May 7, 1993, regarding the Companies' CVR Program, LBR recovery, and CC calculation, and issued an Order regarding these issues on June 30,

1993. Cambridge Electric Light Company/Commonwealth Electric Company, D.P.U. 93-15/16 (1993).[13]

Regarding the Companies' 1992 C&LM Performance, the Department conducted four days of evidentiary hearings between June 1, and June 4, 1993. The Companies presented six witnesses: Andrew S. Griffiths, vice president; Steven L. Geller, director of demand-program administration; Beauford L. Hunt, manager of integrated resource planning; Anthony J. Casella, manager of rate administration; Paul A. Fiocchi, manager of demand-program administration; Richard A. Moran, manager of demand-program management. For purposes of the 1992 C&LM Performance investigation, the Department moved the following exhibits into the record of D.P.U. 93-15/16-A: Exhibits C-1 through C-12; Exhibits DPU-1-PER-5 through 19; Exhibits DPU-4-PER-1 through 8; Exhibit DPU-5-PER-1; Exhibit AG/DOER-PER-1 (testimony of Harlan Lachman); and Exhibit IRATE-1 (testimony of W. Curtis Collyer).[14] The Companies responded to 33 record requests, and Briefs and Reply Briefs were timely filed by the Companies, the Attorney General (jointly filed with DOER),

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[13] In D.P.U. 93-15/16, the Department approved, with specific directives, the Companies' LBR recovery proposal, proposed CVR Program, and CC calculations. In addition, the Department approved: (1) the Companies' proposal to compute one CC decimal for the G-6 (All-Electric Schools) and the medium and large general rate classes, thus addressing the issue of the allocation of Custom Rebate Program dollars to the G-6 class; and (2) budgets for the Companies' two ongoing residential programs for the twelve-month period from July 1, 1993 through June 30, 1994. On July 8, 1993, the Department approved the Companies' Compliance Filing, filed July 6, 1993, as consistent with all directives contained in D.P.U. 93-15/16.

[14] In addition, the Department took administrative notice of the following exhibits and record responses from the most recent general rate case for Cambridge, Cambridge Electric Light Company, D.P.U. 92-250 (1993): Exhibits AG-260 and AG-261, RR-AG-106 (including supplement), and RR-AG-107.

CLF, and IRATE concerning the Companies' 1992 C&LM Performance.

II. SCOPE OF THE INSTANT PROCEEDING

In D.P.U. 93-15/16, the Department approved CC rates for the Companies' ratepayers for a twelve-month period from July 1, 1993 to June 30, 1994. Id. at 45-52. For each rate class, the approved CC rate is composed of: (1) projected C&LM expenditures for the twelve-month period from July 1, 1993 to June 30, 1994; (2) projected LBR attributed to the rate class for the period from January 1, 1993 through June 30, 1994; and (3) a reconciliation of the under- or over-recovery of C&LM expenditures for the period ending June 30, 1993.

In D.P.U. 93-15/16, the Department investigated and made findings on the projected expenditures and the LBR components of the CC rates. However, because the Department instituted a separate schedule for our investigation of the Companies' C&LM performance, we did not fully investigate the reconciliation component, in particular the expenditure levels included in the reconciliation. The purpose of the instant proceeding is to assess the Companies' C&LM performance during 1992 and the first half of 1993 to determine the level of C&LM expenditures that the Companies are allowed to recover from their ratepayers. As a result of this investigation, it may prove necessary to revise the CC rates approved in D.P.U. 93-15/16.

During 1992 and the first half of 1993, the Companies incurred expenses associated with the four C&LM programs addressed in D.P.U. 91-80 Phase Two-A. Although the two commercial and industrial programs, the Small C&I Program and the CRP, were suspended on April 1, 1991 and October 1, 1991, respectively, the Companies incurred expenses

associated with the CRP pipeline projects, and inspection and monitoring and evaluation activites in both programs (Exhs. DPU-PER-3, DPU-PER-7). In addition, the Companies incurred expenses associated with the Task Force process. These expenses fall into two categories: (1) program design efforts;[15] and (2) the work of the Independent Expert. Finally, the Companies incurred expenses associated with general contract support (RR-DPU-PER-1, RR-DPU-PER-7, RR-DPU-PER-18). Table 1 summarizes the expenditures associated with each of the categories mentioned above.

III. POSITIONS OF THE PARTIES

A. The Attorney General, DOER, and CLF[16]

The Attorney General and DOER assert that the record in the instant proceeding shows that the Companies' C&LM performance in 1992 suffered from "gross omissions, inadequate designs, poor and unfair implementation, and flawed evaluation" (AG/DOER Brief at 7). The Attorney General and DOER argue that, because of the Companies' substandard performance in C&LM, they have failed to comply with their obligation to provide reliable service to their customers at least cost (id. at 4).

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[15] Program designs were submitted in D.P.U. 92-218 for the following programs: Residential Multi-Family; Residential Public Housing; Residential Lighting; Appliance Efficiency; Residential New Construction; Commercial New Construction; and Performance Contracting Programs (RR-DPU-PER-1, RR-DPU-PER-8).

[16] On June 14 and 29, 1993, the Attorney General and DOER jointly filed their initial and reply briefs, respectively, in this matter ("AG/DOER Brief" and "AG/DOER Reply Brief"). On June 14, 1993, CLF submitted a letter to the Department indicating its support of the positions offered by the Attorney General and DOER, especially concerning the Companies' C&LM management failure and the need for a third party to direct and operate the Companies' future C&LM efforts.

The Attorney General and DOER note that, in 1992, the Companies offered no C&LM services for their multifamily residential customers (including public housing residents), commercial and industrial ("C&I") customers,[17] and for residential space heat customers in Cambridge's service territory (id. at 8-9). The Attorney General and DOER argue that the Companies' failure to design and implement cost-effective C&LM programs in 1992 for most customer sectors in their service territories is in contrast to other Massachusetts utilities that have designed comprehensive arrays of cost-effective C&LM programs that serve all customer sectors (id. at 9-10; AG/DOER Reply Brief at 2).

The Attorney General and DOER contend that the Companies' failure to design cost-effective programs can be traced to the shortcomings of their cost-effectiveness analysis. The Attorney General and DOER cite the following as examples of these shortcomings: (1) program cost-effectiveness was computed by using savings data from one program to project the savings to be achieved in another program ; (2) the billing data used to project savings were not adjusted to account for changes in economic conditions; and (3) savings projections were based on a measurement period that coincided with the start-up of the program (AG/DOER Brief at 10-11). The Attorney General and DOER maintain that one result of the Companies' failure to design cost-effective programs is lost opportunities for inexpensive, long-term savings in the new construction, remodeling, and equipment purchase markets (id. at 9).

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[17] The Attorney General and DOER note that the Companies did install C&LM measures in some C&I facilities, if these facilities qualified as "pipeline" projects in the CRP (AG/DOER Brief at 8).

The Attorney General and DOER argue that the Companies failed to properly manage or implement the C&LM programs they did offer in 1992 (id. at 13). The Attorney General and DOER claim that, contrary to the Companies' contention, the reduced activity in the RESH Program was the result of management failure and not market saturation (id. at 15-16; AG/DOER Reply Brief at 6). The Attorney General and DOER assert that the Companies did not continue to telemarket this program actively in an effort to reach their overall and low-income participation goals (AG/DOER Brief at 13). In addition, the Attorney General and DOER note that Mass Save[18] was under no contractual obligation to serve a specified number of customers or deliver a specified level of savings (id. at 14, 15). The Attorney General and DOER assert that the RESH Program has fixed overhead costs that do not vary with the level of direct program expenditures (id. at 17). Thus, the reduced activities in the RESH Program resulted in a decrease in the program's cost-effectiveness (id.; AG/DOER Reply Brief at 8).

In addition, the Attorney General and DOER argue that the Companies have not appropriately solved the problem of the large backlog of customers waiting to receive services in the RESH Program (AG/DOER Brief at 14). The Attorney General and DOER assert that the Companies reduced the backlog by taking two actions. First, in 1991, the Companies redesigned the program so that condominium customers, who had no other program options, were no longer eligible to participate in the RESH Program, resulting in a reduction in the backlog of 680 customers. Second, the Attorney General and DOER state,

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[18] Mass Save is the Companies' contractor for the provision of C&LM services related to the RESH Program.

the Companies "purged" 300 low-income customers from the waiting list without making an adequate effort to inform those customers (id. at 14-15). The Attorney General and DOER argue that these actions were inappropriate responses to the backlog problem (id.). Finally, the Attorney General and DOER assert that an additional 493 customers were enrolled in the RESH Program who were not serviced, thus creating, the Attorney General and DOER claim, an eight and one-half month wait for these customers to receive services, at the 1992 rate of implementation (id. at 13).

The Attorney General and DOER assert that the use of the Energy Choice survey ("Survey") in the two residential programs represents an example of imprudent expenditures and the Companies' inability to control spending (id. at 17). The Attorney General and DOER contend that (1) the Companies are unable to quantify the energy savings resulting from the Survey; (2) the Survey is not meant to provide statistically valid savings results; (3) the main Survey benefits are associated with data collection, and not savings verification; and (4) that similar benefits could have been achieved at a significantly lower cost (id.).

The Attorney General and DOER further contend that the Companies did not properly evaluate their programs (id. at 13). The Attorney General and DOER assert that the following are examples of the Companies' poor efforts in this area: (1) the Companies did not pursue the evaluation findings that program costs were double the projected costs; (2) the RESH Program process evaluation applauded the reduction in the backlog despite anomalies in how that reduction was achieved; (3) billing data were not properly evaluated; and (4) the HWGU Program evaluation was performed by Company personnel rather than an independent entity (id.). The Attorney General and DOER assert that the Companies have

financial incentives not to correct flaws in evaluation methodology (id. at 12). The Attorney General and DOER recommend that the Department review the evaluations when more complete data are available (id.).

The Attorney General and DOER also assert that the Companies failed to cooperate adequately with the Task Force and the Independent Expert or to adopt fully the recommendations contained in the Independent Expert's Report (id. at 11-12; AG/DOER Reply Brief at 3).

The Attorney General and DOER recommend that the Department take two actions to address the Companies' poor performance in 1992. First, the Attorney General and DOER recommend that the Department disallow 41 percent of the fixed overhead costs associated with the RESH Program,[19] because the Company failed to achieve 41 percent of projected participation (AG/DOER Brief at 19-20). This action would result in a disallowance of $110,000 (id.). In addition, the Attorney General and DOER recommend that the Department disallow the recovery of the $214,000 spent on the Energy Choice survey (id. at 20).

The second recommendation involves the Companies' future C&LM activities. The Attorney General and DOER recommend that, as a means of redirecting the Companies in their future C&LM activities, the Department should do the following: (1) establish a system

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[19] The Attorney General cites the following fixed overhead expenses: (1) 1.73 full-time equivalent Company personnel, $127,290 (RR-AG-PER-2); (2) one full-time Mass Save coordinator, $62,640 (RR-AG-PER-1); and (3) Company management expenses (RR-AG-PER-3).

of rewards and penalties that is based on specified objective milestones (id. at 1-2, 20-23);[20] and (2) appoint independent consultants to oversee the Companies' evaluation reports and the computation of their benefit/cost ratios (id.).

B. IRATE

IRATE asserts that the 1992 C&LM performance of the Companies was faulty, especially in terms of management and program design (IRATE Brief at 1-2). IRATE argues that neither the Department nor the Companies have adequate "tools" to make an assessment of the Companies' performance (id.). IRATE asserts that the Companies' poor 1992 C&LM performance should not be rewarded by the Department (id.).

C. The Companies

1. Introduction

The Companies claim that 1992 was a year of transition in terms of their C&LM activities (Companies Brief at 6). As a general matter, the Companies cite the following 1992 activities as demonstration of their good-faith effort to provide quality C&LM services to their customers: (1) the continued development of the CVR Program; (2) the Companies' involvement in such undertakings as the Golden Carrot Program[21] and IRM process; (3) the

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[20] In their Reply Brief at 8, the Attorney General and DOER indicate that this issue should be dealt with in the context of the C&LM RFP process established in D.P.U. 91-234 and confirmed in D.P.U. 92-218. See Section I.B., n. 14, supra.

[21] The Golden Carrot Efficiency Program is sponsored by the United States Environmental Protection Agency and involves a consortium of utilities providing funding to refrigerator manufacturers to produce CFC-free equipment that exceeds federal energy efficiency standards. The Golden Carrot refrigerators will then be used in these utilities' service territories.

improvements in their data base and engineering estimates (id. at 45-48);[22] (4) the Companies' efforts in calculating avoided transmission and distribution costs; (5) the Companies' work with the Task Force;[23] (6) enhanced and comprehensive process and impact evaluations and detailed quarterly reports (id. at 57-60, 64);[24] and (7) the Companies' comprehensive D.P.U. 92-218 Filing[25] (id. at 11-13, 55-59, 64; Companies Reply Brief, at 3-4). The Companies assert that many of these activities were commended in the Independent Expert's Report or were in accordance with Task Force recommendations (Companies Brief at 11-13, 55-59, 64).

2. Compliance with D.P.U. 91-80 Phase Two-A Directives

The Companies assert that they moved swiftly, and in good faith, to address the issues and directives raised in DPU 91-80 Phase Two-A. The Companies maintain that: (1) a work plan was developed to ensure compliance with all directives contained in

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[22] The Companies contend that they have implemented a data base upgrade, to be completed later in 1993, in keeping with the schedule recommendations of the Independent Expert (Companies Brief at 47-48).

[23] The Companies consistently maintain that, despite the apparent lack of consensus, the Companies worked diligently and in good faith with the Independent Expert and the Task Force (Companies Brief at 56-57; Companies Reply Brief at 5).

[24] The Companies state that they retained outside experts to conduct all process evaluations and, contrary to the assertions of the Attorney General and DOER, the objectivity of these evaluations cannot be questioned (Companies Brief at 57-58, 64). The Companies argue that to adopt the recommendation of the Attorney General and DOER that evaluations be supervised by an entity outside the Companies would create an unnecessary, costly and redundant layer of review (id.).

[25] In terms of the program designs submitted as part of the Filing, the Companies assert that they selected only those recommendations of the Independent Expert that would lead to effective program designs (Companies Brief at 55).

D.P.U. 91-80 Phase Two-A (id. at 7); (2) rate impacts from C&LM expenditures were stabilized, through such methods as internal and external amortization of program costs and improved inspection activities (id. at 9, 61); (3) management was reorganized on a more functional basis and staffing levels were increased by hiring from outside the Companies, as recommended in the Independent Expert Report (id. at 10, 62); (4) an External Relations Liaison position was created, in an effort to address customer concerns; and (5) the customer backlog for the RESH Program was reduced (id. at 9, 22, 61).

With respect to program implementation, the Companies cite the enhancements to implementation of the RESH Program, the completion of pipeline projects in CRP, and extensive quality control and inspection activities that resulted in a decrease in the cost/KWH saved (id. at 12-14). The Companies note that they performed process and impact evaluations for all of their programs and that the process evaluations for the RESH and HWGU Programs show a 95 percent customer approval rating (id.).

3. RESH Program

With respect to the RESH Program, the Companies maintain that "the RESH Program is one of the most comprehensive, popular and effective DSM Programs in New England" and that it is "securely cost-effective" (id. at 18-19). The Companies argue that, based on the success of the RESH Program, the disallowance of certain overhead costs suggested by the Attorney General and DOER for failure to meet certain program goals would be an unfair penalty (id. at 63).

The Companies maintain that the reduction in customers served in the RESH Program, from the 2,000 customers predicted to the 1,180 customers actually served, and the

resulting underexpenditure in 1992, were a result of two factors: (1) market saturation; and (2) RESH Program enhancements that proved to be time consuming yet increased savings on a per site basis, thus limiting the number of sites visited (id. at 20-27). The Companies assert that they became aware that the RESH Program had reached market saturation, and that they would not reach the preapproved enrollment targets, during the third quarter of 1992 because their enrollment targets were "overly aggressive" and demand for the program unexpectedly decreased (id.).[26] The Companies assert that, despite the underexpenditures in 1992, they are currently ahead of the five-year participant projections from 1989 (id. at 23).

In terms of low-income participation in the RESH Program, the Companies argue that, although they did not reach the projected participation rate of 20 percent, the low-income participation rate was a respectable 14 percent of total 1992 treatments (id. at 23-28). The Companies also argue that, through Mass Save, they undertook extensive efforts to coordinate with Community Action Program agencies to provide RESH Program services to low-income customers (id. at 28-29). The Companies also maintain that they attempted a telemarketing campaign to focus on low-income customer enrollments (id.).

With regard to the Companies' efforts to decrease the backlog of customers waiting to participate in the RESH Program, the Companies argue that they reduced the wait for service from nearly a year in 1990 to four to six weeks in 1992, contrary to the assertions of the

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[26] The Companies assert that the revised projections indicating the decreased expenditures in the RESH Program were provided to the Department in two quarterly reports on October 30, 1992 and December 1, 1992 (Companies Brief at 26). The Companies indicate that the explanation of the RESH Program under-expenditures in these reports was brief because the Companies, based on past criticism, had focused on over-expenditures (id. at 28, n.15, 16).

Attorney General and DOER (id. at 37). The Companies state that they reduced the backlog by 680 customers in 1991 and by 545 customers in 1992 by providing treatments, acknowledging customer deactivation requests, and by unilaterally deactivating as "ineligible" certain previously enrolled multi-family and condominium customers in 1991 and low-income customers in 1992 (id.; Companies Reply Brief at 6).[27] The Companies assert that, although they advised the Department and interested parties of the condominium customer deactivation, they did not view this decision to deactivate as a significant design change mandating a new preapproval request (Companies Brief at 38-39, n.24).

The Companies acknowledge that their deactivation protocol in 1991, i.e., failure to contact certain condominium customers to inform them that they had been removed from the program, "was not as rigorous as would have been optimal" (id. at 38, 41). However, the Companies contend that they responded to the deactivation protocol shortcomings for condominium customers by performing more diligent deactivation protocols and telemarketing to reactivate and provide C&LM services to low income customers removed from the waiting list (id. at 39-41).

The Companies cite the following actions as further demonstration of the success of

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[27] The Companies state that multi-family customers, who were never eligible to participate in this program, and certain low-income customers had been incorrectly enrolled in the RESH Program due to pre-screening errors (id. at 39). The Companies assert that condominium customers, who were initially eligible to participate in this program, were later deemed ineligible because they had unique characteristics, e.g. common areas, that could not be effectively addressed by the RESH Program design (id. at 18, 39). However, the Companies assert that they continued to serve those condominium customers that had already had an on-site assessment and had measures prescribed (id. at 39).

the RESH Program: (1) program enhancements recommended by the Companies' consultants, such as the enhancement of data collection systems and careful monitoring of the performance of general contractors, such as Mass Save, were implemented by the Companies; (2) the conclusions of the process evaluation report indicated that the RESH Program was successfully implemented; (3) enhanced pre-screening activities were undertaken; and (4) concerns related to participant tax liabilities were addressed (id. at 19-25).

4. HWGU Program

The Companies maintain that the HWGU Program is projected to be cost-effective and was well-implemented in 1992, as demonstrated by: (1) solid market penetration; (2) coordination with the energy conservation service ("ECS") Survey Plus Program; (3) telemarketing campaign targeting low-income and elderly customers; (4) close monitoring of the Companies' general contractors; (5) positive results of the completed process evaluation; and (6) the adoption of the process evaluation recommendations (id. at 31-34).

5. Other Issues

The Companies contend that the actual general expenditures in 1992 generally, and for the HWGU Program specifically, were higher than the level projected in D.P.U. 91-80 Phase Two-A because: (1) the Companies retained expert consultants to aid in the development of detailed program designs and materials for the Task Force process; (2) the cost of these consultants was not anticipated when the projected program budgets for 1992

were developed;[28] and (3) only the $250,000 annual budget provided for the Independent Expert in the Settlement had been preapproved by the Department (id. at 41-44). The Companies contend that the additional expenditures for expert consultants: (1) facilitated the Companies' good faith cooperation with the Task Force; (2) were directly related to Department-approved activities; (3) increased the expertise of the Companies' staff; and (4) will aid in the design of programs to be submitted as part of the Companies' C&LM competitive solicitation in their IRM proceeding (id. at 43-44).

The Companies assert that the Energy Choice Survey component of the HWGU and RESH programs was included in the program design preapproved by the Department in D.P.U. 91-80 Phase Two-A and, therefore, expenditures related to the Survey should not be disallowed as the Attorney General and DOER contend (id. at 35, 63). The Companies contend that, although they are unable to quantify savings resulting from the Survey, the Survey has proven cost-effective for other utilities, and provides benefits through customer education and enhanced data collection (id. at 35-36).

The Companies assert that their 1992 cost-effectiveness analysis was consistent with Department precedent and cite the following positive characteristics of the analysis: (1) impact evaluation data, adjusted for certain known factors, were used to develop benefit/cost ratios; (2) enhanced cost estimates and savings estimates were used; and (3) the bandwidth analysis applied by the Companies appropriately recognizes the inherent risks and

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[28] The Companies argue that the general expenditure projection submitted as part of the Settlement was developed strictly for planning purposes and was subject to revision (id. at 42, n.29).

uncertainties involved in the implementation of C&LM programs. The Companies note that the Independent Expert Report praised the Companies' cost-effectiveness analysis (id. at 50-52; Companies Reply Brief at 3). The Companies oppose the Attorney General and DOER's proposal for an independent entity to conduct the cost-effectiveness analysis of their programs (Companies Brief at 52).

The Companies state that, although not opposed per se to the Attorney General and DOER's suggestion to develop a system of performance milestones, they recommend a symmetrical milestone approach and urge that the Department pursue this suggestion in future proceedings (id. at 66).

IV. ANALYSIS AND FINDINGS

A. Introduction

As stated in Section II, supra, the purpose of this proceeding is to review the C&LM expenditures incurred by the Companies in 1992 and the first half of 1993 for the purpose of determining the level of these expenditures that the Companies are entitled to recover from their ratepayers. The results of this investigation will be used to revise, if necessary, the CC rates approved by the Department in D.P.U. 93-15/16.

In D.P.U. 91-80 Phase Two-A, the Department preapproved direct and general program expenditure levels,[29] for 1992 and the first half of 1993, associated with each of the Companies' four C&LM programs addressed in that proceeding. In addition, the Department

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[29] Direct program expenditures include measure rebate, measure installation, and inspection costs. General program expenditures include administration and monitoring and evaluation costs.

preapproved specified expenditures to support the work of the Independent Expert, pursuant to the Settlement approved in the same proceeding. The Companies' actual expenditures in 1992 and the first half of 1993 were associated with two types of activities: (1) the implementation and/or evaluation of the four C&LM programs; and (2) the Companies' involvement in the Task Force process (RR-DPU-PER-1, RR-DPU-PER-8, RR-DPU-PER-17). The Department will address these activities separately, for the purpose of determining the appropriate cost recovery levels.

The Department notes that there is one expenditure item, general contract support,[30] that does not fit explicitly into either of these types of activities. The Companies categorized their total 1992 general contract expenses and a portion of the first half, 1993 general contract expenses as being associated with program implementation activities (RR-DPU-PER-1; RR-DPU-PER-8; RR-DPU-PER-17). However, the record shows that the Companies allocated the general contract support expenses equally to each program addressed by the Task Force (RR-DPU-PER-18). If these expenditures were incurred to support the Companies' 1992 C&LM activities, then the expenditures should have been allocated to the four existing programs. By allocating the general contract support expenditures to the Task Force programs, the Companies demonstrated that these expenditures were incurred in support of their future C&LM activities. Accordingly, the Department finds that general contract support expenditures incurred by the Companies during 1992 and the first half of 1993 are appropriately treated as Task Force-related expenditures.

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[30] The Companies also refer to these as demand management consultant expenditures.

B. Standard of Review

The first issue to be decided by the Department in this proceeding is whether the Companies' actual expenditures in 1992 and the first half of 1993 are in accordance with the terms of preapproval, as set forth in the Department's Order in D.P.U. 91-80 Phase Two-A. The Department has stated previously that,

> By preapproving the recovery of an electric company's [C&LM] program costs, we implicitly make the finding that the electric company, through the implementation of those programs, is appropriately meeting its obligation to serve its customers in a least-cost, reliable manner. In making this finding, the Department is committing ratepayers' dollars to a specified level of C&LM services, to be distributed among rate classes in a specified manner.

D.P.U. 91-80 Phase Two-A at 28-29. Sound management practice may, in very specific circumstances, require a company to deviate from the terms of preapproval. There could be instances where circumstances have changed so significantly since the date of the preapproval order that a modification to the level and/or distribution of a company's C&LM services could be an appropriate management response; indeed, such a modification may be required by that company's obligation to serve its customers in a least-cost, reliable manner.

This clarification does not represent a new policy of the Department, but emphasizes our goal to require sound decison-making on the part of a company and not to allow the preapproval mechanism to serve as a shield from responsible, ongoing decision making. However, companies are currently required to "inform the Department of any plans to alter the preapproved level and/or distribution of … [their] C&LM services …. [E]lectric companies are not granted, through the preapproval process, the flexibility to alter the level and/or distribution of these services without the explicit approval of the Department."

D.P.U. 91-80 Phase Two-A at 28-29. The Department has stated that failure by a company to inform the Department of a substantial modification to its preapproved C&LM activities, and to receive our explicit approval for such a modification, would represent a violation of the terms of preapproval. Id. Such a violation may represent a failure by a company to meet its obligation to serve its customers in a reliable, least-cost manner. The Department has responded previously to such failure by reducing a company's allowed return on equity and by disallowing executive employee incentives in the company's subsequent base rate case. See, Cambridge Electric Light Company, D.P.U. 92-250, at 120-121 (1993);[31] Boston Edison Company, D.P.U. 85-266-A/271-A at 6-15 (1986).

In formulating our regulations governing the preapproval of investments in electric plant, the Department found that it is appropriate for electric companies to "bear the risks, and enjoy the potential rewards, associated with changes in the costs of construction and operation of new generation investments...."[32] Payment for availability and output, rather than recovery of cost of service, creates incentives for sound management, and fairly allocates risk between ratepayers and shareholders." D.P.U. 86-36-C at 77-78 (1988). More recently, the Department has found that supply-side preapproval contracts should include an availability guarantee that would penalize the supplier for poor availability and offset the costs ratepayers would bear if a unit is not performing and the company has to

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[31] See note 6, supra, for a summary of the actions taken by the Department in D.P.U. 92-250.

[32] The Department notes that the preapproval ratemaking treatment was targeted initially at electric companies' investments in generation facilities.

secure additional, higher-cost energy from another source. Boston Edison Company, D.P.U. 91-176, at 12-13 (1992).

In applying preapproval ratemaking treatment to companies' investments in C&LM, the Department found, in 1990, that "it would be somewhat premature and counterproductive to require … companies to move immediately to an exclusively performance-based cost recovery system … for recovering the direct costs of C&LM programs." Massachusetts Electric Company, D.P.U. 89-194/195, at 173-174 (1990). The Department found at that time that, while companies are gaining greater experience in designing, implementing, and monitoring C&LM programs, it is appropriate to protect companies from the downside risk that actual savings would be lower than estimated savings because of unanticipated customer behavior or technical problems. Id. Accordingly, up to the present time, the Department's preapproval orders have not tied cost recovery for C&LM investments to after-the-fact (i.e., post-installation) determinations of KWH or KW savings;[33] nor have the preapproval orders included penalty provisions to protect ratepayers in the instances where companies do not meet the specified performance targets.

However, if the Department finds that a company has altered the terms of a C&LM preapproval order, an after-the-fact review of that company's C&LM performance is appropriate to determine the level of expenditures that the company may be permitted to recover from its ratepayers. In such instances, the Department finds it appropriate to limit a

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[33] The Department notes that, as C&LM preapproval takes place in the context of IRM, companies will be expected to propose performance-based cost-recovery mechanisms. See Boston Edison Company, D.P.U. 90-335, at 138 (1992).

company's cost recovery to a level that can be shown to be reasonable.

C. Program Expenditures

1. RESH Program[34]

In D.P.U. 91-80 Phase Two-A, the Department preapproved direct expenditures of $2,600,000 and general expenditures of $150,000 for the RESH Program for 1992, to provide services to 2,000 customers (Exh. DPU-1-PER-10; RR-DPU-PER-6).[35] The record shows that the Companies' actual level of direct and general program expenditures in 1992 were $1,398,111 and $381,637,[36] respectively, providing services to 1,180 customers (Exh. DPU-1-PER-10; RR-DPU-PER-2). The result is that the Companies (1) spent approximately $1.2 million less on direct program activities and approximately $230,000 more on general program activities than the levels preapproved in D.P.U. 91-80 Phase Two-A, and (2) served 820 fewer customers than the projected level.

As stated in Section IV.B supra, a reduction in direct program activity from the preapproved level may be an appropriate response to circumstances that have changed since

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34 The RESH Program is operational only in Commonwealth's service territory.

35 The Department preapproved program expenditures through June 30, 1993. Id. at 19-20. The level of program activity in the first half of 1993 was expected to remain unchanged from the 1992 level (i.e., $1,300,000 in direct expenditures for the first half of 1993).

36 The level of general expenditures is based on the amount indicated in RR-DPU-PER-2 ($402,025), with two adjustments: (1) expenditures associated with Task Force-related activities ($33,763, as indicated in RR-DPU-PER-1) are excluded; and (2) expenditures associated with residential monitoring and evaluation activities ($13,375, as indicated in RR-DPU-PER-2) are included. Both the preapproved and actual levels reflect only those expenditures that are recovered through the CC. Expense items such as payroll and overhead are recovered through base rates and are not addressed explicitly in the preapproval proceeding.

the preapproval Order and, thus, may not be inconsistent with the terms of preapproval. However, as explicitly stated in D.P.U. 91-80 Phase Two-A, companies are required (1) to inform the Department of any plans to alter the preapproved level and/or distribution of their C&LM services; and (2) to receive the explicit approval of the Department for such changes. Id. at 28-29.

The Companies first indicated to the Department their projected underexpenditures in the 1992 RESH Program in their October 1, 1992 C&LM cost recovery status expenditure report;[37] there was neither a written description nor an explanation provided in this report for the projected underexpenditure. In their December 1, 1992 C&LM expenditure report, the Companies provided a one sentence description for the underexpenditures, stating simply that they projected RESH program underexpenditures of "[a]pproximately $950,000 resulting from a reduction in customer participation" (Exh. DPU-18, at 2). Finally, on January 15, 1993, in response to a Department information request,[38] the Companies provided information regarding the reason for the underexpenditure (Exh. DPU-14).[39] Based on this

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[37] The program expenditure and cost recovery information contained in this report was based on actual data through September 30, 1992 and estimated data for the remaining months of 1992.

[38] The Department's information request was issued in regard to the Companies' Joint Petition for the Continued Effectiveness of Current Conservation Charge Decimals (see Section I.A, supra).

[39] In their response to the Department's record request, the Companies indicated that the reduced program activity was a result of the following factors, each of which increased the amount of time required per site visit: (1) program enhancements; (2) an increase in the number of blower door treatments; and (3) increased customer education efforts (Exh. DPU-14). During the course of the instant proceeding, the Companies expanded on their explanation to state that market saturation was the primary reason for the underexpenditure (Exh. DPU-1-PER-11).

level of reporting, the Department finds that the Companies: (1) failed to adequately inform the Department of the 1992 RESH Program underexpenditures in a timely manner; and (2) failed to obtain explicit approval of the Department for the modification to this program. Therefore, the Department finds that, with regard to the implementation of the 1992 RESH Program, the Companies violated the terms of preapproval set forth in D.P.U. 91-80 Phase Two-A.

As stated in Section IV.B supra, in an instance where the Department finds that a company has violated the terms of a C&LM preapproval order, a company's cost recovery is limited to a level that the Department finds to be reasonable. With regard to the Companies' 1992 RESH Program expenditures, the Department finds that the reasonable level of cost recovery is determined by the level of benefits that were provided to ratepayers; i.e., the Companies are allowed to recover only those 1992 RESH expenditures that resulted in net benefits to their ratepayers.

In determining a program's net benefits, the program costs are compared to the savings benefits that result from the program's implementation. As stated above, the Department previously has found that, in the short term, in order to protect companies from the downside risk that actual C&LM savings would differ from estimated savings because of customer behavior or technical problems, companies should not be held liable, in terms of cost recovery, if an after-the-fact determination of savings indicates that a preapproved program was not cost-effective during the previous year.[40] However, in the instance where a

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[40] In such instance, companies are expected to address the problem of reduced savings, e.g., through program redesign efforts, in order to continue implementation of the

company has violated the terms of preapproval, the Department finds that it is no longer appropriate to protect a company from these downside risks (i.e., a company will be held liable, in terms of cost recovery, if an after-the-fact determination of savings indicates that a preapproved program was not cost-effective during the previous year). In determining the net benefits resulting from the implementation of the 1992 RESH Program, the Department will use the best available savings estimates to determine net benefits, even if such estimates differ significantly from the estimated savings used in the preapproval process.

During the course of these proceedings, the Companies submitted two different savings estimates for use in their 1992 RESH Program cost-effectiveness analysis. The initial savings estimate, contained in IR-DPU-1-PER-10, was 1014 KWH saved per site. The Companies later submitted a revised savings estimate, 2305 KWH saved per site, claiming that the initial estimate was "very conservative" (Exh. DPU-1-PER-10, Supplemental Response; RR-DPU-PER-20). For the following reasons, the Department considers the initial savings estimate to be the best available estimate: (1) the initial savings estimate for 1992 is consistent with the estimate used by the Companies in their 1993 RESH Program cost-effectiveness analysis, 1192 KWH saved per site; and (2) the Companies did not indicate that the higher estimate was based on information that was not available to them at the time of the initial analysis.

The Department finds that, based on actual RESH Program expenditure data and the best available savings estimates, the benefit/cost ratio for the 1992 RESH Program was 0.89;

C&LM program.

i.e., for every dollar spent, the Companies' ratepayers received 89 cents in savings benefits (RR-DPU-PER-20). The Department finds that, in 1992, the Companies incurred total program expenditures of $1,892,198 and achieved savings benefits of $1,696,837 (id.).[41] Accordingly, the Department disallows $195,361, the level of program expenditures that exceeds the benefits.

The Department rejects the Attorney General's proposal to disallow 41 percent of the Companies' expenditures on this program. The Attorney General stated that this level of disallowance reflects the 41 percent decrease in program participation from the preapproved level. As stated above, the Department does not consider reduced program activity, by itself, to be an adequate basis for disallowance. Rather, the Department finds that it is the result of the reduced activity, i.e., the significant decrease in the cost-effectiveness of the program (to the extent that the incurred expenditures exceeded the savings benefits) that is the appropriate basis for determining the level of disallowance.

With respect to RESH expenditures during the first half of 1993, the record shows that, based on actual program expenditure data and the best available savings estimates, the benefit/cost ratio for the RESH Program during this time was 1.11 (RR-DPU-PER-20). Accordingly, the Department finds that, because this program was cost-effective during the

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[41] The program expenditures include those expenditures that are recovered through both the CC and base rates (i.e., payroll and overhead expenses). This amount differs from the amount cited in RR-DPU-PER-20 because, for the purpose of this analysis, only those expenditures associated with the implementation of this program in 1992 are included. RR-DPU-PER-20 includes expenditures that are associated with Task-Force-related activities associated with this program ($33,763, as indicated in RR-DPU-PER-1).

first half of 1993, i.e., provided net savings benefits to ratepayers, the Companies are allowed to recover the full amount of these expenditures from their ratepayers.

2. HWGU Program

In D.P.U. 91-80 Phase Two-A, the Department preapproved direct expenditures of $600,000 and general expenditures of $341,000 for the HWGU Program in Commonwealth's service territory for 1992, to provide services to 6,900 customers (Exh. DPU-5-PER-1). The record shows that Commonwealth's actual level of direct and general program expenditures in 1992 were $735,391 and $36,572, respectively, providing service to 6,603 customers (Exh. DPU-5-PER-1; RR-DPU-PER-1; RR-DPU-PER-2). For Cambridge, the Department preapproved direct expenditures of $36,000 and general expenditures of $4,509 for 1992, to provide services to 600 customers (Exh. DPU-5-PER-1). The record shows that Cambridge's actual level of direct and general program expenditures in 1992 were $53,023 and $17,077,[42] respectively, providing service to 442 customers (Exh. DPU-5-PER-1; RR-DPU-PER-7; RR-DPU-PER-8).

The Department finds that, in Commonwealth's service territory, the 1992 HWGU expenditures comply with the terms of preapproval set forth in D.P.U. 91-80 Phase Two-A; in addition, the Department finds that the HWGU expenditures during the first half of 1993 are consistent with the preapproved level.[43] Accordingly, the Department finds that

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[42] The levels of general expenditures for both Commonwealth and Cambridge are based on the amounts indicated in RR-DPU-PER-6, with the exclusion of any expenditures included in RR-DPU-PER-6 that are associated with Task Force-related activities

[43] The Department preapproved the HWGU Program through June 30, 1993. The level

Commonwealth is allowed full recovery of its HWGU expenditures from its ratepayers.

At the same time, the record shows that, in Cambridge's service territory, a portion of the HWGU expenditures was not in accordance with the terms of the D.P.U. 91-80 Phase Two-A preappproval. As stated in Section IV.B supra, in an instance where the Department finds that a company has violated the terms of a C&LM preapproval order, a company's cost recovery is limited to a level that the Department finds to be reasonable. With regard to the Companies' HWGU Program expenditures, the Department finds that the reasonable level of cost recovery is determined by the level of benefits that were provided to ratepayers; i.e., the Companies are allowed to recover only those HWGU expenditures that resulted in net benefits to their ratepayers. The record in the instant proceeding shows that the benefit/cost ratio for the HWGU Program was 1.17 in 1992, and 1.21 in the first half of 1993 (Exh. DPU-5-PER-1). Accordingly, the Department finds that, because these programs remained cost-effective, i.e., provided net savings benefits to ratepayers, Cambridge is allowed to recover the full amount of the expenditures from its ratepayers.

As for the Energy Choice Survey, the Department notes that the Survey and associated expenditures were preapproved in D.P.U. 91-80 Phase Two-A. The Department finds that the Companies implemented the Survey in accordance with the preapproval and, therefore, rejects the Attorney General's proposal to disallow expenditures associated with the Survey. However, the Department requires the Companies to submit, as part of their

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of activity during the first half of 1993 was expected to remain unchanged from the 1992 level (i.e., $300,000 in direct expenditures for Commonwealth and $18,000 for Cambridge in the first half of 1993).

compliance filing, information demonstrating the benefits of the Survey, if they propose to continue using this Survey. In the absence of such a demonstration in the compliance filing, the Companies should cease to use the Survey as part of their programs.

3. CRP and Small C&I Programs

As noted in Section I.A, supra, the CRP and Small C&I Program were suspended by the Companies on April 1, 1991 and October 1, 1991, respectively. In D.P.U. 91-80 Phase Two-A, the Department approved CRP expenditures associated with installing measures in pipeline projects (i.e., those projects in progress when the suspensions took effect), as well as evaluation and monitoring expenses for both programs. The Department finds that the Companies' actual CRP and Small C&I Program expenditures during 1992 and the first half of 1993 were in accordance with the terms of D.P.U. 91-80 Phase Two-A preapproval and that the Companies are allowed full recovery of these expenditures.

D. Task Force-Related Expenditures

In D.P.U. 91-80 Phase Two-A, the Department preapproved $250,000 for 1992 and $125,000 for the first half of 1993, to support the work of the Independent Expert in the Task Force process.[44] Id. at 9-21. The record in the instant proceeding shows that the Companies incurred expenses in 1992 of $1,539,161[45] associated with their involvement with the Task Force process, including the expenditures incurred for the work of the Independent

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[44] For 1992, $190,000 was allocated to Commonwealth and $60,000 to Cambridge. For 1993, $95,000 was allocated to Commonwealth and $30,000 to Cambridge.

[45] Of this amount, $1,055,425 was allocated to Commonwealth and $483,736 was allocated to Cambridge. These amounts include general contract support expenditures, as noted in Section IV.A, supra.

Expert (RR-DPU-PER-1; RR-DPU-PER-8). In addition, the Companies incurred Task Force-related expenses during the first half of 1993 of $472,249,[46] including the Independent Expert expenditures (RR-DPU-PER-17).

In D.P.U. 91-80 Phase Two-A, the Department approved the Companies' participation in the Task Force process. However, the Department did not preapprove the Companies' recovery of Task Force-related expenditures above the amount specified for the Independent Expert. In that Order, the Department stated that we would review the budgets associated with the Task Force-designed programs as the programs were submitted for preapproval during the course of 1992, to be implemented over the ensuing months. The product of the Companies' Task Force-related work was the Companies' Filing in D.P.U. 92-218. The Department took the extraordinary step of dismissing the Filing because litigation would not lead to "timely implementation of programs and would not be in the best interest of ratepayers." Id. at 9-14.

Although the Companies' work with the Task Force may produce tangible benefits to their ratepayers at a future date (e.g., in the form of program designs submitted as part of the Companies' C&LM resource portfolio in D.P.U 91-234-A, their ongoing IRM proceeding), the programs submitted in D.P.U. 92-218 have not been implemented; thus, ratepayers are receiving no benefits from these programs at the present time. Accordingly, the Department finds that the Companies are not allowed to recover any of the expenditures

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[46] Of this amount, $340,121 was allocated to Commonwealth and $132,128 was allocated to Cambridge. These amounts include general contract support expenditures, as noted in Section IV.A, supra.

associated with their program design/Task Force activities at this time, except for the amount preapproved for the Independent Expert. This finding results in disallowances of $1,110,546 for Commonwealth and $525,864 for Cambridge.[47] Table 2 summarizes the disallowed expenditures.

E. Other Issues

The Attorney General has made three recommendations to the Department with regard to the Companies' future C&LM activities: (1) establish a performance milestone standard, under which the Companies are rewarded for meeting the specified milestones or penalized for failing to meet such milestones; (2) appoint an independent consultant to oversee the Companies' C&LM program cost-effectiveness analyses; and (3) appoint an independent consultant to oversee the Companies' C&LM evaluation activities.

The Department agrees in principle with the establishment of performance milestones. However, the Department considers this to be an issue that is addressed more appropriately in the context of the Companies' C&LM RFP that is being investigated in D.P.U. 91-234-A. Accordingly, the Department makes no findings on this issue in the instant proceeding.

Similarly, the Department considers the appointment of independent consultants to oversee the Companies' C&LM evaluation activities and their program cost-effectiveness analysis to be issues that are addressed more appropriately in D.P.U. 91-234-A. Accordingly, the Department again makes no findings on these issues in the instant

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[47] The disallowances listed here include the amount of Independent Expert expenditures that exceeded the level preapproved in D.P.U. 91-80 Phase Two-A. The record shows that the Companies incurred $199,430 in Independent Expert expenses during the first half of 1993 (RR-DPU-PER-17); the preapproved amount was $125,000.

proceeding.

V. Revised CC Rates

Based on the findings in this Order, the Companies are disallowed recovery of the following expenditures:

	RESH Program Expenditures	Task Force-Related Activities	TOTAL
Commonwealth	$195,361	$1,110,546	$1,305,907
Cambridge		$ 525,864	$ 525,864
TOTAL DISALLOWED	$195,361	$1,636,410	$1,831,771

The Companies are ordered to compute revised CC rates based on the Department's findings in this Order and to submit the revised rates in a compliance filing within seven days of this Order.

VI. ORDER

Accordingly, after notice, hearing and due consideration, it is hereby

ORDERED: That Cambridge Electric Light Company and Commonwealth Electric Company comply with all directives contained in this Order.

By Order of the Department,

Table 1 SUMMARY OF COMPANIES C&LM EXPENDITURES

Expense Category	Commonwealth (2)		Cambridge (3)	
	1992 ($)	1993 ($), 1st half	1992 ($)	1993 ($), 1st half
PROGRAM IMPLEMENT				
RESH (1)	1,779,748	639,462	0	0
HWGU	771,963	329,051	70,100	22,089
Small C&I	876,715	137,554	282,592	34,549
CRP	7,274,964	1,005,081	3,379,127	1,438,512
Sub Total	10,703,390	2,111,148	3,731,819	1,495,150
TASK FORCE ACTIVITIES				
Program Design	305,515	17,298	150,083	3,548
Ind. Expert	192,038	145,308	62,630	54,122
General Contract Support	557,872	177,515	271,023	74,458
Sub Total	1,055,425	340,121	483,736	132,128
TOTAL	11,758,815	2,451,269	4,215,605	1,627,278

NOTE (1) The RESH Program is offered only in Commonwealth's service territory.

(2) The expenditures listed for Commonwealth are based on information contained in RR-DPU-PER-2, for 1992, and RR-DPU-PER-17, for 1993. Program implementation expenditures have been revised to exclude expenditures associated with Task Force-related activities, as indicated in RR-DPU-PER-1, for 1992, and RR-DPU-PER-17, for 1993 (these expenditures have been included in the program design category of Task Force activities). In addition, for 1992, expenditures listed in RR-DPU-PER-2 for residential, commercial, and industrial M&E have been allocated to the programs as listed.

(3) The expenditures listed for Cambridge are based on information contained in RR-DPU-PER-7, for 1992, and RR-DPU-PER-17, for 1993. Program implementation expenditures have been revised to exclude expenditures associated with Task Force-related activities, as indicated in RR-DPU-PER-8, for 1992, and RR-DPU-PER-17, for 1993 (these expenditures have been included in the program design category of Task Force activities). In addition,

for 1992, expenditures listed in RR-DPU-PER-7 for residential M&E have been allocated to the HWGU Program and expenditures listed for commercial and industrial M&E have been allocated to the Small C&I Program and CRP based on the proportion of the programs' direct expenses.

*****For internal purpose only*****
Table 1 lists the disallowances, as allocated to rate classes, and the revised CC rates.
Table 1

Comm.	$ Disallowed			Rev. CC	93-15 CC
Rate Class	Prog. Exp.	Task Force Expend			
		1992	1993		
R1		355,064	18,681		.00059
R3	215,749	97,747	106,472		.00274
G1		186,143	53,389		.00354
G3/G6		224,433	66,579		.00263
TOTAL	215,749	863,387	245,121		
CAMBRIDGE					
R1		192,429	35,175		
R3		0	0		
G1		80,455	40,090		
G3		148,085	26,863		
TOTAL		420,969	102,128		

Table 1

Companies' C&LM Expenditures

Expense Category	Commonwealth (2)		Cambridge (3)	
	1992 ($)	1993 1st Half ($)	1992 ($)	1993 1st Half ($)
PROGRAM IMPLEMENTATION				
RESH (1)	1,779,748	639,462	0	0
HWGU	771,963	329,051	70,100	22,089
Sm. C&I (4)	876,715	137,554	282,592	34,549
CRP (4)	7,274,964	1,005,081	3,379,127	1,438,512
Sub Total	10,703,390	2,111,148	3,731,819	1,495,150
TASK FORCE ACTIVITIES				
Program Design	305,515	17,298	150,083	3,548
Independent Expert	192,038	145,308	62,630	54,122
General Contracting Support (5)	557,872	177,515	271,023	74,458
Sub Total	1,055,425	340,121	483,736	132,128
TOTAL	11,758,815	2,451,269	4,215,555	1,627,278

NOTES:

(1) The RESH Program is offered only in Commonwealth's service territory.

(2) The expenditures listed for Commonwealth are based on information contained in RR-DPU-PER-2, for 1992, and RR-DPU-PER-17, for 1993. Program implementation expenditures have been revised to exclude expenditures associated with Task Force-related activities, as indicated in RR-DPU-PER-1, for 1992, and RR-DPU-PER-17, for 1993 (these expenditures are included as Task Force-related program design expenditures). In addition, for 1992, expenditures listed in RR-DPU-PER-2 for residential, commercial, and industrial M&E have been allocated to the programs as listed.

(3) The expenditures listed for Cambridge are based on information contained in RR-DPU-PER-7, for 1992, and RR-DPU-PER-17, for 1993. Program implementation expenditures have been revised to exclude expenditures associated with Task Force-related activities, as indicated in RR-DPU-PER-8, for 1992, and RR-DPU-PER-17, for 1993 (these expenditures are included as Task Force-related program design expenditures). In addition, for 1992, expenditures listed in RR-DPU-PER-7 for residential M&E have been allocated to the HWGU Program and expenditures listed for commercial and industrial M&E have been allocated to the Small C&I Program and CRP based on the proportion of the programs' direct expenses.

(4) The decrease in expenditures in the CRP and the Small C&I Program during the first half of 1993 reflect the fact that these programs were suspended on April 1, 1991 and October 1, 1991, respectively.

(5) General contract support expenditures are included as Task Force-related activities, as described in Section IV.A, supra.

Table 2

Disallowed Task Force-Related Expenditures

Category	Commonwealth (1)		Cambridge (2)	
	1992 ($)	1993 1st Half ($)	1992 ($)	1993 1st Half ($)
PROGRAM IMPLEMENTATION				
Residential Electric Space Heat	33,763	9,021		
Hot Water/General Use	24,565		10,528	
Multi-Family	13,289		5,694	
Public Housing	9,793		4,196	
Residential Lighting	41,021	8,277	17,38	3,548
Appliance Labeling	33,446		8,968	
Residential New Construction	20,432		5,249	
C/I New Construction	30,600		12,619	
Small C&I	18,877		15,011	
CRP	41,372		35,154	
ISS	38,357		16,439	
Joint Delivery			18,842	
Sub Total	305,515	17,298	150,083	3,548
INDEPENDENT EXPERT	2,038	50,308	2,630	24,122
GENERAL CONTRACT SUPPORT	557,872	177,515	271,023	74,458
TOTAL, BY YEAR	865,425	245,121	423,736	102,128
TOTAL		$1,110,546		$525,864

NOTES:

(1) The expenditures listed for Commonwealth are based on information contained in RR-DPU-PER-1, for 1992, and RR-DPU-PER-17, for 1993.

(2) The expenditures listed for Cambridge are based on information contained in RR-DPU-PER-8, for 1992, and RR-DPU-PER-17, for 1993.